



House of Representatives

General Assembly

File No. 666

January Session, 2013

Substitute House Bill No. 6511

House of Representatives, May 1, 2013

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-267 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) No person shall use or possess with intent to use drug
4 paraphernalia, as defined in subdivision (20) of section 21a-240, to
5 plant, propagate, cultivate, grow, harvest, manufacture, compound,
6 convert, produce, process, prepare, test, analyze, pack, repack, store,
7 contain or conceal, or to ingest, inhale or otherwise introduce into the
8 human body, any controlled substance, as defined in subdivision (9) of
9 section 21a-240, other than a cannabis-type substance in a quantity of
10 less than one-half ounce. Any person who violates any provision of
11 this subsection shall be guilty of a class C misdemeanor.

12 (b) No person shall deliver, possess with intent to deliver or
13 manufacture with intent to deliver drug paraphernalia knowing, or
14 under circumstances where one reasonably should know, that it will
15 be used to plant, propagate, cultivate, grow, harvest, manufacture,
16 compound, convert, produce, process, prepare, test, analyze, pack,
17 repack, store, contain or conceal, or to ingest, inhale or otherwise
18 introduce into the human body, any controlled substance, other than a
19 cannabis-type substance in a quantity of less than one-half ounce. Any
20 person who violates any provision of this subsection shall be guilty of
21 a class A misdemeanor.

22 (c) Any person who violates subsection (a) or (b) of this section (1)
23 with intent to commit such violation in or on [, or within one thousand
24 five hundred feet of,] a specific location, (2) which location the trier of
25 fact determines is the real property comprising a public or private
26 elementary or secondary school, or within two hundred feet of the
27 perimeter of the real property comprising a public or private
28 elementary or secondary school, and (3) who is not enrolled as a
29 student in such school, shall be imprisoned for a term of one year
30 which shall not be suspended and shall be in addition and consecutive
31 to any term of imprisonment imposed for violation of subsection (a) or
32 (b) of this section.

33 (d) No person shall (1) use or possess with intent to use drug
34 paraphernalia to plant, propagate, cultivate, grow, harvest,
35 manufacture, compound, convert, produce, process, prepare, test,
36 analyze, pack, repack, store, contain or conceal, or to ingest, inhale or
37 otherwise introduce into the human body, less than one-half ounce of a
38 cannabis-type substance, or (2) deliver, possess with intent to deliver
39 or manufacture with intent to deliver drug paraphernalia knowing, or
40 under circumstances where one reasonably should know, that it will
41 be used to plant, propagate, cultivate, grow, harvest, manufacture,
42 compound, convert, produce, process, prepare, test, analyze, pack,
43 repack, store, contain or conceal, or to ingest, inhale or otherwise
44 introduce into the human body, less than one-half ounce of a cannabis-
45 type substance. Any person who violates any provision of this

46 subsection shall have committed an infraction.

47 (e) The provisions of subsection (a) of this section shall not apply to
48 any person (1) who in good faith, seeks medical assistance for another
49 person who such person reasonably believes is experiencing an
50 overdose from the ingestion, inhalation or injection of intoxicating
51 liquor or any drug or substance, (2) for whom another person, in good
52 faith, seeks medical assistance, reasonably believing such person is
53 experiencing an overdose from the ingestion, inhalation or injection of
54 intoxicating liquor or any drug or substance, or (3) who reasonably
55 believes he or she is experiencing an overdose from the ingestion,
56 inhalation or injection of intoxicating liquor or any drug or substance
57 and, in good faith, seeks medical assistance for himself or herself, if
58 evidence of the use or possession of drug paraphernalia in violation of
59 said subsection was obtained as a result of the seeking of such medical
60 assistance. For the purposes of this subsection, "good faith" does not
61 include seeking medical assistance during the course of the execution
62 of an arrest warrant or search warrant or a lawful search.

63 Sec. 2. Section 21a-278a of the general statutes is repealed and the
64 following is substituted in lieu thereof (*Effective October 1, 2013*):

65 (a) Any person eighteen years of age or older who violates section
66 21a-277 or 21a-278, and who is not, at the time of such action, a drug-
67 dependent person, by distributing, selling, prescribing, dispensing,
68 offering, giving or administering any controlled substance to another
69 person who is under eighteen years of age and is at least two years
70 younger than such person who is in violation of section 21a-277 or 21a-
71 278, shall be imprisoned for a term of two years, which shall not be
72 suspended and shall be in addition and consecutive to any term of
73 imprisonment imposed for violation of section 21a-277 or 21a-278.

74 (b) Any person who violates section 21a-277 or 21a-278 by
75 manufacturing, distributing, selling, prescribing, dispensing,
76 compounding, transporting with the intent to sell or dispense,
77 possessing with the intent to sell or dispense, offering, giving or
78 administering to another person any controlled substance (1) with

79 intent to commit such violation in or on [, or within one thousand five
80 hundred feet of,] a specific location, and (2) which specific location the
81 trier of fact determines is (A) the real property comprising (i) a public
82 or private elementary or secondary school, (ii) a public housing
83 project, or (iii) a licensed child day care center, as defined in section
84 19a-77, that is identified as a child day care center by a sign posted in a
85 conspicuous place, or (B) within two hundred feet of the perimeter of
86 the real property comprising such public or private elementary or
87 secondary school, public housing project or licensed child day care
88 center, shall be imprisoned for a term of three years, which shall not be
89 suspended and shall be in addition and consecutive to any term of
90 imprisonment imposed for violation of section 21a-277 or 21a-278. To
91 constitute a violation of this subsection, an act of transporting or
92 possessing a controlled substance shall be with intent to sell or
93 dispense in or on, or within [one thousand five] two hundred feet of
94 the perimeter of, the real property comprising a public or private
95 elementary or secondary school, a public housing project or a licensed
96 child day care center, as defined in section 19a-77, that is identified as a
97 child day care center by a sign posted in a conspicuous place. For the
98 purposes of this subsection, "public housing project" means dwelling
99 accommodations operated as a state or federally subsidized
100 multifamily housing project by a housing authority, nonprofit
101 corporation or municipal developer, as defined in section 8-39,
102 pursuant to chapter 128 or by the Connecticut Housing Authority
103 pursuant to chapter 129.

104 (c) Any person who employs, hires, uses, persuades, induces,
105 entices or coerces a person under eighteen years of age to violate
106 section 21a-277 or 21a-278 shall be imprisoned for a term of three
107 years, which shall not be suspended and shall be in addition and
108 consecutive to any term of imprisonment imposed for violation of
109 section 21a-277 or 21a-278.

110 Sec. 3. Section 21a-279 of the general statutes is repealed and the
111 following is substituted in lieu thereof (*Effective October 1, 2013*):

112 (a) Any person who possesses or has under his control any quantity
113 of any narcotic substance, except as authorized in this chapter, for a
114 first offense, may be imprisoned not more than seven years or be fined
115 not more than fifty thousand dollars, or be both fined and imprisoned;
116 and for a second offense, may be imprisoned not more than fifteen
117 years or be fined not more than one hundred thousand dollars, or be
118 both fined and imprisoned; and for any subsequent offense, may be
119 imprisoned not more than twenty-five years or be fined not more than
120 two hundred fifty thousand dollars, or be both fined and imprisoned.

121 (b) Any person who possesses or has under his control any quantity
122 of a hallucinogenic substance other than marijuana or four ounces or
123 more of a cannabis-type substance, except as authorized in this
124 chapter, for a first offense, may be imprisoned not more than five years
125 or be fined not more than two thousand dollars or be both fined and
126 imprisoned, and for a subsequent offense may be imprisoned not more
127 than ten years or be fined not more than five thousand dollars or be
128 both fined and imprisoned.

129 (c) Any person who possesses or has under his control any quantity
130 of any controlled substance other than a narcotic substance, or a
131 hallucinogenic substance other than marijuana or who possesses or has
132 under his control one-half ounce or more but less than four ounces of a
133 cannabis-type substance, except as authorized in this chapter, (1) for a
134 first offense, may be fined not more than one thousand dollars or be
135 imprisoned not more than one year, or be both fined and imprisoned;
136 and (2) for a subsequent offense, may be fined not more than three
137 thousand dollars or be imprisoned not more than five years, or be both
138 fined and imprisoned.

139 (d) Any person who violates subsection (a), (b) or (c) of this section
140 in or on, or within [one thousand five] two hundred feet of [,] the
141 perimeter of the real property comprising (1) a public or private
142 elementary or secondary school and who is not enrolled as a student in
143 such school, or (2) a licensed child day care center, as defined in
144 section 19a-77, that is identified as a child day care center by a sign

145 posted in a conspicuous place, shall be imprisoned for a term of two
146 years, which shall not be suspended and shall be in addition and
147 consecutive to any term of imprisonment imposed for violation of
148 subsection (a), (b) or (c) of this section.

149 (e) As an alternative to the sentences specified in subsections (a) and
150 (b) and specified for a subsequent offense under subsection (c) of this
151 section, the court may sentence the person to the custody of the
152 Commissioner of Correction for an indeterminate term not to exceed
153 three years or the maximum term specified for the offense, whichever
154 is the lesser, and at any time within such indeterminate term and
155 without regard to any other provision of law regarding minimum term
156 of confinement, the Commissioner of Correction may release the
157 convicted person so sentenced subject to such conditions as he may
158 impose including, but not limited to, supervision by suitable authority.
159 At any time during such indeterminate term, the Commissioner of
160 Correction may revoke any such conditional release in his discretion
161 for violation of the conditions imposed and return the convicted
162 person to a correctional institution.

163 (f) To the extent that it is possible, medical treatment rather than
164 criminal sanctions shall be afforded individuals who breathe, inhale,
165 sniff or drink the volatile substances defined in subdivision (49) of
166 section 21a-240.

167 (g) The provisions of subsections (a) to (c), inclusive, of this section
168 shall not apply to any person (1) who in good faith, seeks medical
169 assistance for another person who such person reasonably believes is
170 experiencing an overdose from the ingestion, inhalation or injection of
171 intoxicating liquor or any drug or substance, (2) for whom another
172 person, in good faith, seeks medical assistance, reasonably believing
173 such person is experiencing an overdose from the ingestion, inhalation
174 or injection of intoxicating liquor or any drug or substance, or (3) who
175 reasonably believes he or she is experiencing an overdose from the
176 ingestion, inhalation or injection of intoxicating liquor or any drug or
177 substance and, in good faith, seeks medical assistance for himself or

178 herself, if evidence of the possession or control of a controlled
179 substance in violation of subsection (a), (b) or (c) of this section was
180 obtained as a result of the seeking of such medical assistance. For the
181 purposes of this subsection, "good faith" does not include seeking
182 medical assistance during the course of the execution of an arrest
183 warrant or search warrant or a lawful search.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	21a-267
Sec. 2	<i>October 1, 2013</i>	21a-278a
Sec. 3	<i>October 1, 2013</i>	21a-279

Statement of Legislative Commissioners:

In sections 2(b) and 3(d), numeration was changed for accuracy.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Correction, Dept.	GF - Potential Savings	Up to 2.4 million	Up to 2.4 million

Municipal Impact: None

Explanation

The bill results in a potential savings of up to \$2.4 million to the Department of Correction related to fewer convictions and prison sentences for violations of statutes pertaining to drug-free zones around schools, day care facilities, and public housing. By reducing the drug-free zone from 1,500 to 200 feet, as well as requiring the trier of the case to determine intent, the bill will likely reduce the number of convictions under these statutes. On average, 46 inmates are convicted under the statutes changed in the bill. It costs the state approximately \$50,375 annually (including fringe benefits) to incarcerate an inmate.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Judicial Department Offenses and Revenue Database

OLR Bill Analysis**sHB 6511*****AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.*****SUMMARY:**

This bill reduces the scope of the laws that enhance the penalties for illegal drug activities near schools, day care centers, and public housing projects (i.e., drug-free zones). It reduces the size of the zones from 1,500 to 200 feet and specifies that they are measured from the perimeter of the property.

The bill also provides that for the enhanced penalty to apply for some of these crimes, the offender must have committed the crime with the intent to do so in a specific location which the trier of fact (i.e., the jury or judge) determines is within such a zone. This applies to violations involving drug paraphernalia or illegal drug sales and related crimes (such as possession with intent to sell), but not to illegal possession. To the extent this provision applies to illegal drug sales and related crimes, it codifies case law (see BACKGROUND).

Currently, these laws generally require a mandatory sentence, in addition and consecutive to any prison term imposed for the underlying crime, as follows:

1. one year for drug paraphernalia possession and specified other paraphernalia-related crimes within 1,500 feet of property comprising a public or private elementary or secondary school when the defendant is not enrolled as a student there;
2. three years for selling, distributing, manufacturing, or

transporting or possessing with intent to sell controlled substances within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign, (b) public or private elementary or secondary school, or (c) public housing project; and

3. two years for possessing illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign or (b) public or private elementary or secondary school when the defendant is not enrolled as a student there.

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Exceptions to Enhanced Penalties; Departing From a Mandatory Minimum

The enhanced penalties described above do not apply to (1) drug paraphernalia-related actions involving less than one-half ounce of marijuana or (2) possessing less than one-half ounce of marijuana. PA 11-71 removed the criminal penalties for such actions and generally made them punishable by fines only.

Also, judges can impose less than the law's mandatory minimum sentence under the laws described above when no one was hurt during the crime and the defendant (1) did not use or attempt or threaten to use physical force; (2) was unarmed; and (3) did not use, threaten to use, or suggest that he or she had a deadly weapon (such as a gun or knife) or other instrument that could cause death or serious injury. Defendants must show good cause and can invoke these provisions only once. Judges must state at sentencing hearings their reasons for (1) imposing the sentence and (2) departing from the mandatory minimum (CGS § 21a-283a).

Penalties for Certain Illegal Drug Offenses

By law, the penalty for using or possessing with intent to use drug paraphernalia (other than in relation to less than one-half ounce of

marijuana) is a class C misdemeanor, punishable by up to three months in prison, a fine of up to \$500, or both. Delivering drug paraphernalia or possessing or manufacturing it with intent to deliver (except involving less than one-half ounce of marijuana) is a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both (CGS § 21a-267).

Selling, manufacturing, distributing, or possessing or transporting with intent to sell a hallucinogen (but not marijuana) or narcotic is punishable (1) for a first offense, by up to 15 years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 30 years, a fine of up to \$100,000, or both; and (3) for subsequent offenses, up to 30 years, a fine of up to \$250,000, or both. For marijuana and other controlled substances, the penalty is (1) for a first offense, up to seven years in prison, a fine of up to \$25,000, or both and (2) for a subsequent offense, up to 15 years, a fine of up to \$100,000, or both. As an alternative, the court may impose up to a three-year indeterminate prison term with conditional release by the correction commissioner (CGS § 21a-277).

By law, a non-drug-dependent person selling, manufacturing, distributing, or possessing or transporting with intent to sell at least one ounce of heroin or methadone, one-half ounce of cocaine or crack, or five milligrams of LSD is subject to five to 20 years in prison to life. For narcotics, hallucinogens, one kilogram or more of marijuana, or amphetamines, the penalty is (1) for a first offense, five to 20 years in prison and (2) for a subsequent offense, 10 to 25 years. There is an exception to the mandatory minimum sentence if the offender is younger than age 18 or had a significantly impaired mental capacity (CGS § 21a-278).

By law, possession of narcotics is punishable (1) for a first offense, by up to seven years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 15 years, a fine of up to \$100,000, or both; and (3) for subsequent offenses, up to 25 years, a fine of up to \$250,000, or both. Possession of a hallucinogen or four or more ounces of marijuana is punishable (1) for a first offense, by up to five years in prison, a fine

of up to \$2,000, or both and (2) for a subsequent offense, up to 10 years, a fine of up to \$5,000, or both. Possession of other controlled substances or one-half ounce or more but less than four ounces of marijuana is punishable (1) for a first offense, by up to one year in prison, a fine of up to \$1,000, or both and (2) for a subsequent offense, up to five years, a fine of up to \$3,000, or both. For these possession crimes with maximum sentences of five years or longer, the court may instead impose up to a three-year indeterminate prison term with conditional release by the correction commissioner (CGS § 21a-279).

Related Cases

In a series of cases, the Connecticut Supreme Court has interpreted the statute setting enhanced penalties for drug sales and related crimes in drug-free zones as requiring the state to prove that the defendant intended to sell drugs at a specific location, which location is within a drug-free zone (see *State v. Denby*, 235 Conn. 477 (1995); *State v. Hedge*, 297 Conn. 621 (2010); *State v. Lewis*, 303 Conn. 760 (2012)). The state does not have to prove that the defendant knew that the location was within such a zone.

For example, in *Lewis*, the defendant was charged with four drug crimes, including possession of narcotics with intent to sell within 1,500 feet of a school. The court's majority upheld the Appellate Court's determination that there was insufficient evidence that the defendant intended to sell drugs at the place where he was arrested.

The defendant was arrested a block from his home, with a large amount of drugs and cash on his person. He was stopped by police because he resembled a suspect in another crime, not because the police suspected an impending drug sale. The court concluded that while the evidence was sufficient to support the jury's verdict that the defendant intended to sell drugs somewhere, it was insufficient to establish that he intended to sell drugs where he was arrested (a location within a drug-free school zone).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 22 Nay 19 (04/12/2013)